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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

GIHAN L. THOMAS,

Appellant,

v.

EDWARD OLSHANSKY,

Respondent.

B289502

(Los Angeles County
Super. Ct. No. LS027916)

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Law Offices of Daniel Hustwit and Daniel T. Hustwit for Appellant.

Cron Israels & Stark and Sam Israels for Respondent.

Gihan Thomas appeals from the attorney fee award in favor of respondent Edward Olshansky, after the trial court found Mr. Olshansky to be the prevailing party in Ms. Thomas's action seeking a civil harassment restraining order against him. Even though the appeal purports to challenge an attorney fee award in a single case, the order arose out of a dispute between neighbors resulting in five separate requests for civil harassment restraining orders, a personal injury action, animal control proceedings, numerous appeals, and a writ proceeding.¹ The harassment litigation in the superior court spans six volumes of reporter's transcripts, and an appellate appendix of over 800 pages, even after appellant omitted many relevant filings.²

While conceding Mr. Olshansky prevailed in Ms. Thomas's civil harassment case against him, Ms. Thomas contends the fee award is "contrary to the law" because it compensated Mr. Olshansky for fees incurred in other cases in which he did not prevail. Ms. Thomas does not claim the award is excessive or should be reduced, but contends the entirety of the award must be reversed as unlawful. Ms. Thomas also contends that to the

¹ Many of the parties to the underlying litigation are attorneys, including Ms. Thomas, her husband and appellate counsel Daniel Hustwit, and Mr. Olshansky's wife. The dispute between the parties has resulted in numerous appeals, some of which were ultimately dismissed.

² No case summaries were included in the appendix. The petitions filed by Mr. Olshansky against Ms. Thomas's husband, and the one filed by Ms. Thomas against Mr. Olshansky's wife, have been omitted. To fill in some of the gaps left by the record before us, we rely on our opinions in the other appeals, and superior court case summaries for the civil harassment cases.

extent the fee award is based on her own bad faith conduct, the award is not supported by substantial evidence.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Olshansky Seeks Restraining Orders Against Ms. Thomas and her Husband Mr. Hustwit

On April 20, 2016, Mr. Olshansky filed two separate requests for a civil harassment restraining order protecting himself and his family from Ms. Thomas (case No. LS027879) and Mr. Hustwit (case No. LS027878; see *Olshansky v. Hustwit* (May 17, 2018, B277903) [nonpub. opn.]). According to the requests, neighbors Ms. Thomas and Mr. Hustwit threatened Mr. Olshansky and his dog, following an April 16, 2016 skirmish between the parties' dogs while walking in their neighborhood. Ms. Thomas claimed she was bitten by Mr. Olshansky's dog, while Mr. Olshansky claimed she was gouged by the dog's collar as she attempted to stop the dogs from fighting. Immediately after the incident, Mr. Hustwit threatened to kill Mr. Olshansky's dog. Later that evening, Ms. Thomas and Mr. Hustwit went to Mr. Olshansky's home, and Mr. Hustwit again threatened to kill his dog. The latter incident was recorded by Mr. Olshansky's security camera. (*Olshansky v. Hustwit*, *supra*, B277903.)

Ms. Thomas Seeks a Restraining Order Against Mr. Olshansky

On April 29, 2016, Ms. Thomas filed a request for a civil harassment restraining order against Mr. Olshansky (the one at issue in this appeal), claiming he repeatedly "threatened" her with his "reckless conduct" of walking his dog in their neighborhood without a leash. She claimed she was bitten by

Mr. Olshansky's dog after repeatedly warning him to use a leash while walking his dog.

Ms. Thomas also filed a response to Mr. Olshansky's request for an order, admitting Mr. Hustwit threatened to kill Mr. Olshansky's dog. Ms. Thomas denied harassing Mr. Olshansky, claiming she went to his house to obtain vaccination records for his dog because she had been bitten.

In addition to the pending civil harassment cases, Ms. Thomas made a complaint to animal control, resulting in proceedings to determine if Mr. Olshansky's dog was a dangerous animal, and filed a personal injury action against Mr. Olshansky.

The Court Grants Temporary Restraining Orders

The court granted temporary restraining orders in all three cases. All three matters were called for further hearing on May 11, 2016, but at that time, the parties were trying to reach a settlement and did not ask the court to issue any further orders.

Restraining Order Trial Against Mr. Hustwit

The trial on Mr. Olshansky's petition against Mr. Hustwit started on June 16, 2016, and was completed on July 25, 2016, over the course of several hearings. At the June 16 hearing, the parties clarified that each of the pending cases arose out of the same events. Nonetheless, the parties and the court agreed to try each case separately, in chronological order according to the filing dates.

Mr. Olshansky, Mr. Hustwit, and Ms. Thomas testified to the events of April 16, 2016, providing conflicting accounts of how Ms. Thomas was injured, and whether Mr. Olshansky's dog was on a leash. Both Ms. Thomas and Mr. Hustwit admitted that Mr. Hustwit threatened to kill Mr. Olshansky's dog.

Mr. Olshansky called an animal behaviorist and dog bite expert to testify, who opined that Mr. Olshansky's dog was friendly and well-behaved, and that Ms. Thomas's injuries were not consistent with a dog bite, but rather with Mr. Olshansky's account of the injuries.

On July 25, 2016, the court issued a civil harassment restraining order against Mr. Hustwit. That ruling was affirmed on appeal. (*Olshansky v. Hustwit, supra*, B277903.)

Mr. Olshansky Files a New Petition Against Ms. Thomas

On July 15, 2016, Mr. Olshansky filed a new request for a civil harassment restraining order against Ms. Thomas (case No. LS028249), and a temporary restraining order was issued. The request was based on the same conduct as the initial request, but also alleged new conduct by Ms. Thomas, including that she walked in front of Mr. Olshansky's house on July 13, 2016, and screamed for his dog to "shut the f--k up" in front of Mr. Olshansky's 14-year-old daughter.

Ms. Thomas Seeks a Restraining Order Against Mr. Olshansky's Wife

On July 29, 2016, Ms. Thomas filed a request for a civil harassment restraining order against Mr. Olshansky's wife (case No. LS028311).³ All of the pending cases were deemed related.

³ That petition is not part of the record on appeal. The case against Mr. Olshansky's wife was ultimately dismissed after she made a special motion to strike the petition. However, the trial court denied her request for attorney fees, and she appealed. That ruling was affirmed by this court. (*Thomas v. Makovoz* (June 12, 2018, B281322) [nonpub. opn.])

Ms. Thomas Seeks to Disqualify Judge Shirley K. Watkins

Following the court's finding that Mr. Hustwit was guilty of harassment, Ms. Thomas filed Code of Civil Procedure sections 170.6 and 170.1 motions to disqualify Judge Watkins from the remaining cases. The trial court denied the motions, and Ms. Thomas's writ challenging that ruling was summarily denied by this court.

The Cases Between Mr. Olshansky and Ms. Thomas Are Tried

The three remaining cases between Mr. Olshansky and Ms. Thomas were tried between August 15, 2016, and June 5, 2017. Both Mr. Olshansky and Ms. Thomas testified, and they called numerous witnesses, including neighbors and experts.

Throughout the proceedings, the court had to admonish Ms. Thomas to stop physically reacting to witnesses' testimony. The court also had to admonish her to behave properly during her own testimony. The court also repeatedly cautioned Ms. Thomas's attorneys that they were conflating the civil harassment case with the personal injury case. The court repeatedly stated, "this is not a dog bite case."

Ultimately, the court denied the requests for restraining orders in all three of the cases between Mr. Olshansky and Ms. Thomas, concluding that there was no conduct by the parties which warranted issuance of restraining orders.

The Parties Seek Costs and Attorney Fees

After the court denied the restraining orders, the parties made numerous filings seeking costs and attorney fees. Ms. Thomas sought over \$51,000 in costs and attorney fees.

Mr. Olshansky moved to strike Ms. Thomas's cost bill, and also submitted a motion for over \$45,000 in fees.

Mr. Olshansky's motion sought attorney fees as the prevailing party in Ms. Thomas's case against him (case No. LS027916), and also on the basis that Ms. Thomas pursued her civil harassment action "when no reasonable attorney would have done so."

According to Mr. Olshansky, Ms. Thomas drove up the costs of litigation by introducing numerous irrelevant witnesses. Ms. Thomas also continued to try her case as if it was a civil dog bite case, despite being admonished not to do so. Mr. Olshansky also argued that costs were warranted because of Ms. Thomas's meritless efforts to disqualify the judge, and the filing of a writ petition. According to Mr. Olshansky, it was clear that Ms. Thomas's case was filed in retaliation for Mr. Olshansky's cases against Ms. Thomas and Mr. Hustwit.

In support of the motion, Mr. Olshansky's counsel submitted a declaration and an invoice. The declaration averred that "I have spent over 75 hours representing [Mr. Olshansky] *in this civil harassment action . . .* at my usual hourly rate of \$500 per hour." (Italics added.) He also anticipated spending three hours on the hearing for the fee motion. The invoice billed for services from May 9, 2016, until August 6, 2017. It did not indicate whether the time was exclusively spent on Ms. Thomas's case against Mr. Olshansky, but did itemize the dates and actions undertaken by counsel. For example, the invoice billed for court appearances on May 11, June 16, July 12, July 25, August 15, October 4, 18, 21, 2016, January 13, January 31, February 22-23, and June 5, 2017.

The invoice also included entries for matters clearly not involving Ms. Thomas's case against Mr. Olshansky, such as reviewing the anti-SLAPP motion filed by Mr. Olshansky's wife in the case against her, and preparing the motion to tax Ms. Thomas's costs. Other entries were nonspecific, such as reviewing emails, and client meetings.

Ms. Thomas opposed the motion, arguing that Mr. Olshansky should recover no costs or fees, and that Ms. Thomas should recover her requested costs and fees. She asserted it was Mr. Olshansky that drove up the litigation expenses, and that he pursued his actions in bad faith to obtain a litigation advantage in her civil case against him.

The opposition also argued that the motion sought fees already recovered in the action against Mr. Hustwit, and for fees incurred in the other cases on which Ms. Thomas prevailed. Ms. Thomas argued Mr. Olshansky had already been compensated for the May 11, June 16, July 12, and July 25 hearings in the Hustwit matter, and included counsel's declaration from the Hustwit matter seeking to recover fees for these specific hearings. No transcripts or minute orders from these hearing were included in the opposition. The trial court had granted Mr. Olshansky attorney fees of \$8,500 in the case against Mr. Hustwit. Mr. Olshansky sought \$15,000 in fees, but the court reduced the award to reflect the fees incurred solely in the case against Mr. Hustwit.

Hearings on the fee motions in all three cases were heard on December 15, 2017, and January 31, 2018.

On February 23, 2018, the court issued its ruling on the submitted matters. The court granted Mr. Olshansky's motion for attorney fees, finding that he was the prevailing party in

Ms. Thomas's civil harassment case against him, and the claimed fees were reasonable and related to his defense. As an additional basis for the award of fees, the court found that Ms. Thomas filed her action in bad faith in retaliation for the action against her husband, and that she filed the action to obtain discovery in her pending civil action.

The court denied Ms. Thomas's requests for attorney fees. Ms. Thomas filed a timely notice of appeal.

DISCUSSION

Ms. Thomas does not challenge the court's authority to award attorney fees to Mr. Olshansky as a prevailing party in her case against him, or the reasonableness of the fees awarded. Instead, her appeal challenges the "legality of the fees," arguing that the billing summary in support of the fee request did not differentiate between the case in which Mr. Olshansky prevailed, and the other cases on which he did not succeed, and therefore, Mr. Olshansky was presumptively awarded fees unrelated to the action on which he prevailed. She also claims Mr. Olshansky erroneously sought to recover fees already recovered in the case against Mr. Hustwit, and for a hearing on his fee motion which never occurred. She contends that a careful examination of the billing summary, and the record on appeal, reveals that Mr. Olshansky was awarded fees for work on other matters in which he did not prevail. Rather than seeking a reduction of fees, she contends the entire fee award must be reversed. We are not persuaded.

Code of Civil Procedure section 527.6 permits the award of fees in actions for temporary restraining orders. Subdivision (s) of that section provides: "The prevailing party in an action brought pursuant to this section *may* be awarded court costs and

attorney's fees, if any.” (Italics added.) The grant or denial of an award of attorney fees is a matter for the trial court's discretion. (*Leydon v. Alexander* (1989) 212 Cal.App.3d 1, 5.) While “[t]he issue of a party's entitlement to attorney fees is a legal issue subject to de novo review. [Citations.] The determination of the amount of fees awarded is reviewed for abuse of discretion. [Citation.] The normal rules of appellate review apply to an order granting or denying attorney fees; i.e., the order is presumed correct, all intendments and presumptions are indulged to support the order, conflicts in the evidence are resolved in favor of the prevailing party, and the trial court's resolution of factual disputes is conclusive.” (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1016-1017.)

The failure of the billing record to differentiate between the cases does not, as a matter of law, render the fee award improper. It is well settled that detailed billing records are *not* required to affirm an attorney fee award. “In California, an attorney need not submit contemporaneous time records in order to recover attorney fees [Citation.] Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records. [Citations.]” (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; see also *Steiny & Co. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285, 293.) Here, Mr. Olshansky's counsel averred that the hours he sought compensation for were expended in *working on the case in which the fees were sought*.

Ms. Thomas argues that a careful examination of the billing record, when compared to the record on appeal, reveals that this averment was false. She contends on appeal, as she did

below, that billing entries for court hearings on May 11, June 16, July 12, and July 25, 2016 related to the Hustwit matter. But she did not provide the trial court with the reporter's transcripts of those hearings or any other evidence to demonstrate to the trial court that Mr. Olshansky was already compensated for attorney's fees incurred on those dates. The only evidence before the trial court, when this motion was made more than a year after these hearings, is a declaration from counsel *asking for* an award of fees for attending these hearings in the Hustwit matter. During many of the hearings in these related cases, counsel and the court discussed more than one case. "Judicial discretion necessarily must be measured in the light of all of the circumstances existing at the time it is exercised." (*Logoluso v. Logoluso* (1965) 233 Cal.App.2d 523, 531.) We find no abuse of discretion based on the information available to the trial court at the time of the hearing on the motion for fees.

Even though some of the fees may not have been incurred in the case on which Mr. Olshansky prevailed (such as matters related to the SLAPP motion in Ms. Thomas's case against Mr. Olshansky's wife), " 'attorneys fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which the fees are proper and one in which they are not allowed.' " (*Fed-Mart Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 227.) Ms. Thomas argues that no case has held that fees need not be apportioned among *different cases*, as opposed to different causes of action in the same case. This point is immaterial, given the interrelationship between the parties and issues in this dispute between neighbors resulting in five separate requests for civil harassment restraining orders, a personal injury action, animal control proceedings, numerous

appeals, and a writ proceeding. Certainly, Ms. Thomas has pointed us to no case *requiring* apportionment under these circumstances. The court could fairly determine that all the hours expended by Mr. Olshansky's counsel were reasonably related to matters common to all of the actions, which had significant overlapping issues and evidence, and arose out of the same events.

Ms. Thomas has not demonstrated that the requested fees were duplicative of the fees already recovered in the Hustwit action. The trial court did not award all of the requested fees in the action against Mr. Hustwit, and apparently only awarded those attributable to the Hustwit action. We can therefore find no abuse of discretion.

Last, Ms. Thomas has also not demonstrated that the court erred in awarding fees for the hearing on the fee motion.

Mr. Olshansky requests that we assess sanctions against Ms. Thomas for prosecuting a frivolous appeal. We decline to award sanctions in this case. We do find, however, that Mr. Olshansky is entitled to his attorney fees as the prevailing party in defending this appeal, to be assessed by the trial court following remittitur. (*Milman v. Shukhat* (1994) 22 Cal.App.4th 538, 546.)

DISPOSITION

The order is affirmed. Respondent shall recover his costs on appeal, and upon application to the trial court, the trial court shall determine the amount of attorney fees to be awarded to respondent.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.